IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 4568 of 2007(R)

PETITIONER:

SHRI.K.M. JOSE,
KALLACHIYIL, PULIKAMALY P.O.,
MULANTHURUTHY, COCHIN-682 314.

BY ADV. SRI.DALE P.KURIEN

RESPONDENTS:
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1. ASSISTANT COMMISSIONER (ASSESSMENT),
VALUE ADDED TAX, COMMERCIAL TAXES DEPARTMENT,
SALES TAX COMPLEX, THEVARA, COCHIN.

2. COMMISSIONER OF COMMERCIAL TAXES,
VIKAS BHAVAN, THIRUVANANTHAPURAM.

3. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO TAXES (B) DEPARTMENT,
THIRUVANANTHAPURAM.

4. INDIAN OIL CORPORATION LIMITED
KERALA STATE OFFICE, PANAMPILLY AVENUE,
PANAMPILLY NAGAR P.O;., COCHIN-682 036,
REPRESENTED BY ITS SENIOR MANAGER.

5. I.B.P.CO.LIMITED, A-2, `CHACKO'S
CHAMBERS', 3RD FLOOR, 40/2353,
M.K.K.NAIR ROAD, PALARIVATTOM, COCHIN-682 025,
REPRESENTED BY ITS SENIOR DIVISIONAL MANAGER.

6. I.B.P.CO.LIMITED,
6/1200, CHEROOTY ROAD, KOZHIKODE-673 032,
REPRESENTED BY ITS DIVISIONAL MANAGER.

7. BHARAT PETROLEUM CORPORATION LIMITED
1, RANGANATHAN GARDENS, OFF 11TH MAIN ROAD,
ANNA NAGAR, CHENNAI-600 040,
REPRESENTED BY ITS SENIOR MANAGER.

8. KERALA VYAPARI VYAVASAYI EKOPANA SAMATHI, (MERCHANTS UNION) REPRESENTED BY ITS PRESIDENT.

BY GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ
ADV. SRI. N.N. SUGUNAPALAN (SR.) SC FOR BPC
ADV. SRI. A.M. SHAFFIQUE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR,J.

WP(C)NO.4568 OF 2007-R

Judgment

The petitioner is a contractor. He is aggrieved by the retrospectivity given to the amendment to Section 6(1)(f) of the KVAT Act. The said amended provision reads as follows :

> *"In the case of transfer of goods involved in the execution of works contract, where the transfer is not in the form of goods but in some other form -*
>
> *(i) where the goods incorporated in the work are separately ascertainable at the rates applicable to the goods and*
>
> *(ii) where the goods incorporated in the work are not separately ascertainable at the rate of 12.5 per cent at all points of sale."*

The rate of value added tax was revised from 4% to 12.5% by the amendment which was enforced on 24.10.2006 with retrospective effect from 01.07.2006. The petitioner submits, he has entered into several contracts and his affairs have been arranged, having regard to the rate of tax provided before the amendment. Now, everything is unsettled by the enhancement of the rate of tax and that too, with retrospective effect. Hence this Writ Petition, seeking the following reliefs :

> *"i. to declare that the amendment made to Clause (f) of Sub-sec.(1) to Sec. 6 of the Entry Tax Act, 2003 brought about vide Kerala Finance Act, 2006 (Act No.22 of 2006) published in the Kerala Govt. Extra Ordinary gazette No.1670 dated 24.10.2006, to be*

illegal and non-est in the eye of law and quash the same ; and

ii. to issue incidentally, a writ of mandamus or appropriate direction in the nature of a writ of mandamus, directing the respondents 1 to 3 to collect tax based on the Value Added Tax Act, 2003, as it stood prior to the amendment of 2006 ; or

iii) to declare that the amended Act shall not be applicable retrospectively in the case of the petitioner for current works contracts, but only for works undertaken later to 24.10.2006 and therefore, the petitioner is not liable to pay value added tax as per VAT (Amendment Act, 2006) for the second quarter of the Assessment year 2006-07 ; and

iv) to issue consequentially, a writ of mandamus or other appropriate direction in the nature of writ of mandamus to the 1st respondent directing to collect quarterly taxes for the 2nd quarter of the fiscal (year) starting (from) 1.7.2006 applying the law and rates as it stood prior to the amendment of 2006."

The main grievance of the petitioner is about the collection of tax at 12.5% during the period between 01.07.2006 and 24.10.2006. In other words, the retrospectivity given to the enhancement of rate of tax is under challenge.

2. The learned Government Pleader points out that the bills proposing to amend the various fiscal statutes were presented in the form of Finance Bill on 01.07.2006, wherein it was provided that the tax proposals contained therein will have effect from 01.07.2006. Though the Act was enforced only on 24.10.2006,

everyone knew that the revised proposals will have effect from 01.07.2006, in view of the specific clause contained in the Finance Bill, it is submitted.

3. It is well settled that the Finance Act, though passed later, can be given effect from the date of presentation of the Finance Bill, containing the proposals for taxation. The said well accepted practice has been followed in this case also. Any inconvenience caused to an individual contractor cannot be a ground for this Court to interfere with a statutory provision. This Court can interfere with a statutory provision, if only the same is enacted in violation of any of the constitutional limitations. I find that no ground has been made out in this Writ Petition to condemn the above quoted provision as unconstitutional. In the result, the Writ Petition fails and it is dismissed.

09.02.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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